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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKING NO.	CONFIRMATION NO.
10/060,521	01/30/2002	John P. Mueller	PC11013A	8456

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NEW YORK, NY 10017-5612

EXAMINER
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DEVI, SARVAMANGALA J N

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.  
10/060,521

Applicant

Mueller

Examiner

S. Devi, Ph.D.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on Jan 30, 2002.
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) \_\_\_\_\_ is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims 1-17 are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

- a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      6)  Other: \_\_\_\_\_

**Restriction**

- 1) Claims 1-17 are under prosecution.
- 2) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at [Paula.Hutzell@uspto.gov](mailto:Paula.Hutzell@uspto.gov) or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
- 3) Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claim 1, drawn to a method of screening a product for its ability to bind to a harA polypeptide of the amino acid sequence, SEQ ID NO: 2, classified in class 435, subclass 7.1
  - II. Claim 1, drawn to a method of screening a product for its ability to bind to a harA polypeptide of the amino acid sequence, SEQ ID NO: 4, classified in class 435, subclass 7.1
  - III. Claims 2 and 3, drawn to a method of screening a product for its ability to inhibit harA activity of a polypeptide of the amino acid sequence, SEQ ID NO: 2, classified in class 435, subclass 7.2
  - IV. Claims 2 and 3, drawn to a method of screening a product for its ability to inhibit harA activity of a polypeptide of the amino acid sequence, SEQ ID NO: 4, classified in class 435, subclass 7.2
  - V. Claim 4, drawn the use of a hygromycin A-resistant *E. faecalis*, classified in class 435, subclass 7.32
  - VI. Claim 4, drawn the use of a hygromycin A-resistant *B. subtilis*, classified in class 435, subclass 7.2
  - VII. Claim 5, drawn to the use of a nucleic acid sequence of SEQ ID NO: 1 to identify an organism, classified in class 435, subclass 7.2

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- VIII. Claim 5, drawn to the use of a nucleic acid sequence of SEQ ID NO: 3 to identify an organism, classified in class 435, subclass 6
- IX. Claims 6-11, drawn to a recombinant vector comprising the nucleotide sequence of SEQ ID N: 1, classified in class 435, subclass 320.1
- X. Claims 6-11, drawn to a recombinant vector comprising the nucleotide sequence of SEQ ID N: 3, classified in class 435, subclass 320.1
- XI. Claim 14, drawn to the *Bacillus subtilis* strain JH642, classified in class 435, subclass 485
- XII. Claim 14, drawn to the *Enterococcus faecalis* strain OG1X, classified in class 435, subclass 471
- XIII. Claims 15-17, drawn to a recombinant harA polypeptide comprising the amino acid sequence of SEQ ID NO: 2, classified in class 530, subclass 350
- XIV. Claims 15-17, drawn to a recombinant harA polypeptide comprising the amino acid sequence of SEQ ID NO: 4, classified in class 530, subclass 350

Claims 12 and 13 are considered as linking claims and would be joined with one of inventions XI and XII, if elected.

4) Inventions I-XIV are distinct from one another. Inventions IX through XIV are directed to distinct products, which differ form one another materially, structurally, and functionally or biologically. Although the amino acid sequences of SEQ ID NO: 2 and 4 as well as the nucleotide sequences of SEQ ID NO: 1 and SEQ ID NO: 3 belong to the same classes and subclasses, these products differ from one another structurally and functionally, thus requiring separate and non-coextensive searches. The two bacterial products of inventions XI and XII differ from one another antigenically and genus- and species-wise and require separate searches. The methods of inventions I and II differ from the methods of inventions III and IV and the methods of V-VIII in method steps and parameters, compositions or reagents used and the ultimate goals accomplished.

5) Inventions XIII and XIV are related to inventions I and II and inventions III and IV respectively as products and processes of using the products. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed

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can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case, the polypeptide product of invention XIII or XIV can be used in a materially different process, such as, a method of immunization as an immunogen.

6) Inventions IX and X are related to inventions VII and VIII as products and processes of using the products. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case, the nucleotide sequences of invention XI and X can be used in a materially different process, such as, the production specific probe reagents.

7) Inventions XI and XII are related to inventions V and VI as products and processes of using the products. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case, the strains of invention XI and XII can be used in a materially different process, such as, a method of immunization as an immunogen, or in a diagnostic assay as a coating antigen.

Because these inventions are distinct for the reasons given and have acquired a separate status in the art as shown by their different classification/subclassification and divergent subject matter, restriction for examination purposes as indicated is proper.

8) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R 1.143).

Applicants are reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filled petition under C.F.R 1.48(b) and by the fee required under 37 C.F.R 1.17(h).

9) Any inquiry concerning this communication or earlier communication(s) from the

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Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. A message may be left on the Examiner's voice mail service. The Examiner can normally be reached on Monday to Friday from 7.15 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

April, 2003

S.  
S. DEVI, PH.D.  
PRIMARY EXAMINER